IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.979 of 2002

Date of decision 21.8.2007

Onkar Singh and another Petitioners

Vs.

State of H.P. and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr.H.K.Bhardwaj, Advocate.

For the respondents: Mr.M.S.Chandel,Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Dy. Advocate Generals for respondents No.1 and 2.

Mr.O.P.Sharma, Senior Advocate, with Mr. Arvind Sharma, Advocate, for respondents No.3 and 7.

Rajiv Sharma, J.

A challenge has been laid by the petitioner to the order dated 10.9.2001 passed by the Additional Director, Consolidation in case No.53/94.

The brief facts necessary for the adjudication of this petition are that the petitioner had filed a revision petition under Section 54 of the Himachal Pradesh, Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 before the Additional Director Consolidation of

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

Holdings on 15.2.1994. The Additional Director Consolidation of Holdings dismissed the revision petition on 10.9.2001.

Mr.H.K.Bhardwaj, leaned counsel appearing for the petitioner had strenuously argued that the order dated 10.9.2001 is a non speaking order and the grounds taken in the revision petition have not at all been discussed by the Additional Director, Consolidation of Holdings. Mr.O.P.Sharma, learned senior counsel appearing on behalf of respondents No.3 to 7 had supported the order dated 10.9.2001.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The position which emerges from the pleadings of the parties is that the consolidation proceedings were started under the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 in the year 1984. During the course of proceedings Mishal Haquiat was prepared in the year 1985-86 and khasra No.858 was given new khasra No.90 and the area had been reflected as 0-1 marla Gair Mumkin Abadi which area remained with the petitioner out of total area, measuring 0-8 marla. A new khasra number was carved out corresponding to old khasra numbers 858 and 859 min and was assigned new khasra No.96, measuring 1-0 kanal (20 marlas), which was given to the predecessor-in-interest of respondents No.3 to 8 i.e. Julfi Ram. Similarly, the Mishal Haquiat for the year 1985-86 qua khasra No.859 min was prepared and khasra No.859 was given new khasra No.91, measuring 0-2 marlas only. Accordingly in the record only 0-2 marlas were incorporated instead of 0-3 marlas. According to the petitioner the Mishal Haquiat prepared in the year 1985-86 for Khasra Nos.858 and 859 were wrongly prepared and the revenue entries recorded therein were contrary to the existing position. In nutshell, the case of the petitioner is that respondents No.3 to 8 have been allotted land more than their entitlement. It is therefore in this background that the

Additional Director Consolidation of Holdings was required to decide the revision petition.

The Additional Director Consolidation of Holdings had not discussed the contentions raised by the petitioner in his order. The petitioner in fact had prayed for allotment of 0-8 marlas from Khasra No.858 and 0-3 marlas from Khasra No.859(min). The Additional Director Consolidation of Holdings had only observed that the order passed by the Consolidation Officer dated 14.6.1985 was correct. The Additional Director Consolidation of Holdings was required to scrutinize whether the order passed by the Consolidation Officer was in conformity with the contentions raised by the petitioner before him. The order passed by the Additional Director Consolidation of Holdings is very cryptic. The Additional Director Consolidation of Holdings had to ensure that there is judicious allotment of land to all the parties during the course of consolidation proceedings.

The Hon'ble Supreme Court has held in **M/s. Travancore Rayons Ltd. v. The Union of India and others,** AIR 1971 Supreme Court 862 that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power. Their Lordships have held as under:-

> "In this case the communication from the Central Government gave no reasons in support of the order; the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the

> conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous: the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

Similarly, their lordships of the Hon'ble Supreme Court have held in **The Siemens Engineering and Manufacturing Co. of India Ltd., v. The Union of India and another,** AIR 1976, Supreme Court 1785, that quasi-judicial order must be supported by reasons. Their Lordships have held as under:-

> "Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by

reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. Tessteels Ltd., C.A. No.245 of 1970 decided on 17-12-1975 (SC). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of

India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs Authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind.**"**

The Hon'ble Supreme Court has held in **State of West Bengal v. Atul Krishna Shaw and another,** *AIR 1990 Supreme Court 2205* that unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority. Their Lordships have held as under:-

> "The appellate authority being final authority on facts is enjoined and incumbent upon it to appreciate the evidence; consider the reasoning of the primary authority and assign its own reasons as to why he disagrees with the reasons and findings of the primary authority. Unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority."

Accordingly this writ petition is allowed. The order dated 10.9.2001 is set side and the matter is remanded back to the Additional Director Consolidation of Holdings for deciding it afresh in accordance with law. The parties are directed to appear before the Additional Director Consolidation of Holdings, Shimla on 24.9.2007.

August 21, 2007 (g) **(Rajiv Sharma), J.**